

**Brookvalewriting.com © 2013 All Rights Reserved. For Professional Custom Papers.****Comparing Legislative System of China with European Parliament and African Parliament**

A key aspect of a country's governance is legislative systems, and that may differ depending on the country's history, culture, social conditions, and other factors. On those lines, in China, the governance and thereby its' legislative system is quite different from other countries because of prominent communist influence from 1950s. China's legislative system refers to the integrated system of laws, regulations and codes that are framed by the Chinese institutions, particularly by its main legislative body, National People's Congress (NPC). When the legislative system of China is compared with global or multi-country groupings like the European Parliament and the African Parliament, it provides key perspectives. Quite different from the individual country's governance, these multi-country groupings exhibit certain characteristics particularly in the legislative function. African Parliament for instance is without legislative power till now and that makes its structure and functioning clearly distinct from Chinese legislative system. Although, the European Parliament has legislative function, unlike the Chinese legislative system, its' members are elected democratically and it performs a limited role in the formulation of laws. Expanding on these basic differences, a comparison of China's legislative system with the European Parliament and the African Parliament is done below, focusing on the major features of each system, how legislators are chosen, what each system can or cannot do, and finally how accountability and transparency are being ensured.

In China, the two main legislative-making organs are the National People's Congress and its Standing Committee, along with other decentralized government bodies. Apart from the NPC and its Standing Committee, regulations can be made by the "State Council and its relevant departments, as well as the legislation of ordinary localities, ethnic autonomous regions, special economic zones and special administrative regions." ("The Legislative System of China," n. d). NPC is structured in the form of a unicameral legislature, having the power to legislate, oversee the Chinese government's functioning, and the authority to elect the key officials of the government. As far as NPC's Standing Committee is concerned, it is regarded as the constitutional authority and even the de facto legislative body because it has the power to modify the legislations formulated by the NPC. When it comes to the European Parliament, unlike the above discussed country specific structure, it is a multi-country grouping because it is considered to be European Union's parliamentary institution. However, like in China, where NPC along with Standing Committee and other bodies carry out the legislative function, the European Parliament along with the Council of the European Union and the European Commission are responsible for the legislative function of the European Union (EU). African Parliament or Pan-African Parliament (PAP) quite like the European Parliament is a multi-country grouping because it acts as the legislative body of the African Union. However, as above-mentioned, unlike China's legislature structure and even European Parliament, it does not have any legislative powers.

NPC consists of close to 3000 members or delegates who are elected for a period of five years through a multi-tiered representative election process. These delegates are elected by the members of the provincial people's assemblies, who are initially elected by the lower level assemblies, and that multi-tier process continues till the members of the local people's assemblies are directly elected by the people. Apart from these "representative delegates", NPC consist of delegates from Hong Kong and Macau, who are elected through the Electoral College instead of direct elections. In addition, Chinese army PLA (People's Liberation Army) has a sizable representation in NPC, making up around 10 percent of the total delegates. ("The Legislative System of China," n. d). European Parliament consists of around 750 members and is regarded as the world's second largest democratic electorate, after the Indian Parliament. Due to its democratic nature and non-representative nature like the China's NPC, members are elected by the people via direct elections, which are held every five years. The 750 odd seats are distributed to the EU member countries based on the concept of "degressive proportionality", which takes into account the size and the population of the country, and based on that criteria Germany has the high number of seats. (Maurer, 2003). African Parliament has 265 representatives and its' election process is different from that of the European Parliament, but has some similarities to the China's NPC election process. Those 265

representatives instead of being directly elected by the people like the European Parliament are designated by the legislatures from 47 of the 54 countries of the African Union, with each parliament electing five representatives (at least one of whom must be a woman). This election by the legislatures reflects representative election process and so has semblance to the China's system.

When one focuses on what NPC can do, as above-mentioned, it plays a prominent role in the formulation of legislations, regulations, and others. The process involved in the drafting of NPC legislation is governed under the 1982 *Organic Law of the NPC* along with the 1989 *NPC Procedural Rules*. The drafting process starts of when a small group of delegates along with some outside experts take a key issue that necessitates legislation and comes up with a draft. This formulated draft will be discussed by various larger groups, all of who will discuss all its finer points, retaining the apt ones and eliminating the unwanted points. As the draft goes under the purview of various groups, the key factor is to maintain consensus at every step of the drafting process. When that draft reaches for the consideration of the full NPC delegates as well as the delegates of the Standing Committee, the essential elements of the legislation are consensually agreed. However, certain minor changes are often done at this stage. The process reaches its logical end, and made into a law after a formal vote by the NPC or by its Standing Committee. Although, all the legislations passed by the NPC are supreme and so cannot be allowed to contravene by the administrative or local laws, there are some exceptions. "Some laws and regulations of autonomous regions may not be completely in line with the Constitution and state law, but still they are allowed to be formulated as a practice of regional autonomy." ("China's Current Legislation Structure," n. d). However, even in the case of those administrative or law laws, it has to be reported to the Standing Committee for approval as well as record keeping purposes. In addition, NPC has the authority to withdraw those laws if it goes against the laws it has formulated. "This system in fact guarantees the leadership of national legislation in the drawing up of autonomous regional laws and regulations." ("China's Current Legislation Structure," n. d). Apart from these legislative functions, NPC only elects the China's President, approves the appointment of the Premier, and approves the work report of various departments' top officials. When it comes to how accountability and transparency of NPC is ensured, it appears to be a debatable process. In contrast to number of countries, where both the final interpretation and the adjudication of a legislation rest with the respective country's Supreme Court, in China, it is the NPC which provides the legal and final interpretation, and its Supreme Court adjudicating the cases based on the legislations. Although the NPC's Standing Committee and the State Council minimally oversee the activities of NPC, its' role in the interpretation of the legislation raises questions regarding its accountability and transparency.

When it comes to the European Parliament, as pointed out earlier it can do the legislative functions along with the Council of the European Union, quite like the NPC, which along with Standing Committee draft legislations. It achieved more legislative and also litigation powers both through its own initiatives, and through favorable treaties or amendments thereby making it EU's co-legislator along with the Council. Ordinary Legislative Procedure, earlier known as Codecision Procedure, is the name given to the procedure under which the European Parliament and the Council combine and co-decide regarding the formulation of legislations. After the EU presents a proposal for legislation to both the Parliament and the Council, they come up with a draft, and discuss through series of readings (maximum three meetings). At the end of the first reading as well as subsequent readings, it is the duty of the Parliament to send its' list of amendments to the Council. The Council for its part can revise the draft adopting those amendments, or provide their own arguments for a "common position". Now the Parliament can either approve that position, or suggest further amendments through an absolute majority, or reject it completely thereby causing the legislation to fail. In that scenario, "Conciliation Committee" is formed comprising of members from the Council as well as equal number of Parliamentarians from the European Parliament, all of whom will seek to reach a compromise. When a compromise is reached, the role of European Parliament assumes significance since the proposed legislation can be approved by the Parliament only through a simple majority. "Here, the European Parliament appeared to gain more control over the legislative process as its powers also included the power to veto in several policy areas." (Demeke, 2004)). From the above analysis of the European Parliament's function, it is clear that although like the

China's NPC and Standing Committee, the Parliament and Council coordinate in the formulation of legislation, when it comes to conflicts there are more chances of conflicts between the Parliament and the Council than the NPC and its Committee. With each body having the power to suggest amendments and importantly the power to reject the legislation proposal, it appears more conflicting. When it comes to the issues of accountability and transparency, the European Parliament appears to be working on the right lines. Litigations can be brought against the European Parliament in multilateral legal bodies like the European Court of Justice in relation to the legislations passed by it. In addition, the Parliament can also institute litigations against EU's other institutions. So, the recognition of the *locus standi* of the European Parliament before the European Court of Justice illustrates how the accountability and the transparency aspects of the European Parliament are positive. (Demeke, 2004). As above-discussed, African Parliament does have legislative power and that limits the actions it can carry out. Although, there are calls from the leaders of the African countries to bestow it with full legislative powers, it has not been actualized till now. "It does not possess important legislative and supervisory powers to participate in important decision-making processes in the AU." (Demeke, 2004, pg.55). Due to this restriction, it can only do consulting and advising duties that to in coordination with other institutions of African Union regarding issues like human rights, peace, transparency, and others. Although it advises on human rights issues, it cannot institute litigations against the governments, other political or even terrorist groups, or even individuals, regarding human rights violations. Thus, when it comes to legislative functions as well as transparency and accountability, African Parliament is still in the infancy, and so effective reforms are needed to strengthen its position.

The important function or characteristic of most parliaments, whether at the national level or regional level, is formulation of legislations. In light of this, only China's NPC and the European Parliament can fulfill that function, with the African Parliament existing purely as a consultative body and also without people's representation through direct elections. Although members of the European Parliament are directly elected by the European electorate, there is a problem of lower voter turnout. "The major reason is the fact that national issues are of more immediate concerns to the citizens than what happens at the EU level." (Demeke, 2004, pg.68). So, the key reform that can be done to the global-level bodies of the European Parliament and the African Parliament is to facilitate more discussion of national-level issues and thereby formulate relevant legislations. In that direction, European Parliament should take up issues that are impacting number of European countries. In the case of African Parliament, the provision of electing its members through direct elections has to be first introduced, so that people's representation is actualized. As far as China's NPC is concerned, reforms can be initiated regarding the same issue of more people representation. Although, the citizens of China play an indirect role in the election of NPC's delegates, it is only at the basic level as they just elect the members of the local assemblies, and have no part in the election of the main delegates. With China yet to adopt democracy in its fullest form, election of NPC delegates appears skewed. So, to exhibit genuine people's representation, citizens have to be given the rights to elect the main delegates of the NPC as well as the Standing Committee.

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References

- “China's Current Legislation Structure.” (n. d). *China Org*. Retrieved from:  
<http://www.china.org.cn/english/kuaixun/76212.htm>
- Demeke, T. (2004). The new Pan-African Parliament: Prospects and challenges in view of the experience of the European Parliament. *African Human Rights Journal*, 4 (1): 54-73.
- Maurer, A. (2003). The Legislative Powers and Impact of the European Parliament. *Journal of Common Market Studies*, 41 (2): 227-247.
- “The Legislative System of China.” (n. d). *China Org*. Retrieved from:  
[http://www.china.org.cn/features/legislative/node\\_1075857.htm](http://www.china.org.cn/features/legislative/node_1075857.htm)